

Jesse Merrithew, OSB No. 074564

Email: jesse@lmhlegal.com

Viktoria Safarian, OSB No. 175487

Email: viktoria@lmhlegal.com

Levi Merrithew Horst PC

610 SW Alder Street, Suite 415

Portland, Oregon 97205

Telephone: (971) 229-1241

Juan C. Chavez, OSB No. 136428

Email: jchavez@ojrc.info

Brittney Plessner, OSB No. 154030

Email: bplessner@ojrc.info

Alex Meggitt, OSB No. 174131

Email: ameggitt@ojrc.info

Franz H. Bruggemeier, OSB No. 163533

Email: fbruggemeier@ojrc.info

Oregon Justice Resource Center

PO Box 5248

Portland, OR 97208

Telephone: 503 944-2270

J. Ashlee Albies, OSB No. 051846

Email: ashlee@albiesstark.com

Whitney B. Stark, OSB No. 090350

Email: whitney@albiesstark.com

Maya Rinta, OSB No. 195058

Email: maya@albiesstark.com

Albies & Stark LLC

1 SW Columbia St. Suite 1850

Portland, Oregon 97204

Telephone: (503) 308-4770

Facsimile: (503) 427-9292

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DON'T SHOOT PORTLAND, et al.

Plaintiffs

v.

CITY OF PORTLAND, a municipal corporation,

Defendant.

Case No.

DECLARATION IN SUPPORT OF PETITION
FOR TEMPORARY RESTRAINING ORDER

I, Nicholas J. Roberts, declare as follows pursuant to 28 USC § 1746:

1. I have personal knowledge of the information contained in this declaration. If called upon to do so, I could and would competently testify regarding the matters set forth herein.
2. I am one of the named-Plaintiffs, and proposed class representatives in this case. I make this declaration in support of Plaintiffs' Motion for a Temporary Restraining Order.
3. I have been informed of the responsibilities of a class representative.
4. In general terms, I understand the claims in the case.
5. I am currently a resident of Portland, Oregon. I am concerned about the use of tear gas at these protests.
6. I am able and willing to serve as a class representative.
7. If appointed, I will stay informed about the case. I will keep in contact with my lawyers. I will put the interests of the class first.
8. I am willing to serve as a class representative.
9. I have lived in the Portland-Metro area all of my life. I recently moved into an apartment in downtown Portland.
10. Last Friday, May 29, 2020, I was at home when I received a text message from a friend around midnight informing me that a protest about police brutality was going on downtown.
11. I decided to see if I could be of assistance because I have some general (nonprofessional) experience in being a first-responder. It was important to me to support others and take a stand in opposition to the American policing system, which I believe was designed and has operated to oppress Black people.
12. Prior to that night, I had never been to a protest in my life. Based on other people's experiences and advice, I put on some general work gloves, two face masks and safety glasses for self-protection. I was concerned about possible COVID-19 exposure, but figured I would

continue my practice social distancing and much as possible, be careful with social contact, and keep my face masks and gloves on.

13. I walked Southwest from my apartment toward Pioneer Square. I saw many police cars zig-zagging through the downtown streets and many young people on the streets who appeared to be part of the protest. Most of them were not wearing any type of protective gear other than a face mask.

14. I arrived at SW 2nd near SW Taylor and SW Yamhill around 1:00am. I heard a group of people shouting “Hands Up, Don’t Shoot” and saw them holding their hands raised in the air. I moved to the “front” of the crowd and joined a row of approximately 5 protesters who were facing a row of about 10-15 police officers. The front-line protesters (including me) had our hands in the air and were not engaging in any violent, aggressive, or threatening behavior. There was a large group of protesters behind us that were also protesting peacefully.

15. Around 2:00am, I heard the police announce instructions over a loud speaker for the protesters to leave the area, but they did not provide any instructions on how to do that. I looked around and did not see a way to safely leave the area. Shortly thereafter, without warning and without provocation, I saw police officers in the line facing us throw tear gas cans over the front-line protesters and into the crowd behind us. I, and the other front-line protesters, had no safe escape; we were trapped between the tear gas and the police officers. I had to run through three separate clouds of tear gas to depart the area.

16. The tear gas hit me immediately and was incredibly painful (an 8 or 9 on a 1-10 scale). I was coughing a lot and having trouble breathing and seeing. I also became incredibly dizzy and disoriented and did not know which way to turn. I was surrounded by others reacting similarly and the overall exposure and reactions seemed very dangerous. As soon as I could, I flushed my eyes out with water and waited about 10 minutes for most of the symptoms to subside.

17. I saw another protester, who was running away from a line of police to escape the tear gas, get shot in the back with rubber bullets four or five times; they were stumbling and struggling while being hit from a gun about 10-15 feet away.

18. The gassing was an extremely scary experience for me and brought up issues of abuse in my past. It also left me very worried about my health and the health of those around me, including our potential exposure to viruses.

19. When I got home, I took a shower and experienced the pain all over again for a few minutes. I could not believe what happened and was afraid to go to attend a protest again.

20. The next day, Saturday, May 30, 2020, I decided to participate in peaceful protest again. Even though I was afraid, Black people have been in fear their whole lives.

21. Around 5:00pm on Saturday, I joined the protesters downtown and ended up in Chapman Square. At some point, the police announced that the curfew was in order and the protesters needed to move North, out of the park. I, along with other protesters, continued to protest peacefully.

22. Without warning or provocation, the police started throwing tear gas canisters into the crowd. I ran with other protesters, trying to escape the gas clouds. I was experiencing the same symptoms that I had the day before to the same intensity. As I was running, I saw a person trying to drag another protester out of the gas clouds. The protester being dragged was very disoriented and said that they could not feel their legs. I helped carry the protester into fresh air.

23. Within about 10 minutes, the police threw more tear gas canisters into the park. I ran West and within two blocks, there was another line of police firing off tear gas toward me. I did not know how to escape and was continuing to experience more painful and disorienting symptoms from the tear gas.

24. Again, I attended a protest on Sunday, May 31, 2020 and again, I was tear gassed. I do

not recall all of the details of that evening, so I am not going to try to recite them at the moment.

25. I attended the protest on Monday, June 1, 2020, and was not tear-gassed. I did not observe any protester behavior on Monday night that was less peaceful than the protests I had participated in the previous nights.

26. On Tuesday, June 2, 2020 around 6:00pm, I attended a protest at Revolution Hall in SE Portland. We marched across the river to Pioneer Square. A lot of protesters were carrying political signs and chanting messages about police brutality and the end of the oppression of Black people. We gathered in Pioneer Square where multiple protesters made powerful speeches to the crowd.

27. Around 9:00pm, I heard a loud sound and saw smoke about two blocks East of the Square. I saw protesters running away from the smoke.

28. I marched with the group back to Revolution Hall, where the group dispersed and people went home around 11:00pm. As I was walking West on Burnside toward my house, I heard people yelling that they were being gassed and I saw people running. I went toward the source of the yelling to see if I could help people who were injured. I ended up in Pioneer Square where there were approximately 100 peacefully protesting and a lot of signs about with messages like “no justice no peace.” Police cars with lights and sirens on were circling the area.

29. Suddenly tear gas was fired into the Square, along with what I believed were either concussion or flash grenades, from the corner of SW 6th and SW Yamhill, and people started to flee the Square. When I turned back I saw two protesters speaking to a police officer near the old courthouse on the West side of Pioneer Square and I started video-record from about 30-40 feet away. I then saw about 20 police officers line the street in front of the courthouse facing the Square and watched as they started throwing tear gas canisters into the crowd without provocation. I saw a Black man walk to the front of the line, facing the row of officers. He bent

down on his knees with his hands in the air. I had more protection for my eyes and lungs at this protest, so I joined another protester and we stood in front of the Black man with our hands in the air.

30. The kneeling man was in shorts and t-shirt, not wearing protective equipment, and was visibly and audibly reacting to the pain from the tear gas. He told the police officers multiple times that he would die for his skin.

31. Without warning or provocation, the officers started hitting me and other protesters with their batons. I was hit in the ribs about 8-10 times as we were pushed toward the Square until we were backed up against a railing or building. The officers told us to take the stairs out of the Square, but we could not get to the stairs and told the officers so. An officer responded by throwing me on to the stairs.

32. People were coughing and confused and running again. The officers instructed the protesters to move North. I looked North and there was another cloud of tear gas blocking that route. We felt trapped again and stayed in the Square with about 50 other protesters until about 2:00am. The crowd continued to act peacefully and I did not witness any more police interaction.

33. I did not attend the protests on Wednesday June 3, 2020. I could barely talk and it was painful to move; I hardly slept the night before. I considered going to the doctor, but was afraid to given the conditions in hospitals right now.

34. I am very wary about protesting again. I am fearful for my life, but also afraid for the lives of others.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 5, 2020.

DocuSigned by:
Nicholas Roberts
4DA3EE65AC98446
Nicholas J. Roberts